

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FERNANDO HERNANDEZ, KENNETH CHOW,  
BRYANT WHITE, DAVID WILLIAMS,  
MARQUIS ACKLIN, CECILIA JACKSON,  
TERESA JACKSON, MICHAEL LATTIMORE,  
and JUANY GUZMAN, each individually, and on  
behalf of all other persons similarly situated,

Case No. 12-CV-4339 (ALC)

Plaintiffs,

-against-

THE FRESH DIET, INC., SYED HUSSAIN,  
Individually, JUDAH SCHLOSS, Individually, and  
ZALMI DUCHMAN, Individually,

Defendants.  
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**AFFIDAVIT OF JUDAH SCHLASS IN OPPOSITION TO PLAINTIFFS'**  
**MOTION FOR A COLLECTIVE ACTION**

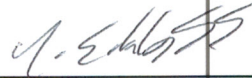
STATE OF NEW YORK                    }  
  } S.S.  
COUNTY OF KINGS                    }

Judah Schlass, being duly sworn, does hereby depose and say:

1. I am the Chief Operating Officer of The Fresh Diet, Inc. and an individual defendant named in this action. As such, I am familiar with the facts and circumstances set forth herein.
2. I respectfully submit this Affidavit in opposition to Plaintiffs' motion requesting an Order from the Court:
  - a. Directing Defendants to disclose the names and last known addressed of all current and former employees who worked as sales associates or customer service associates within the statutory time period; and

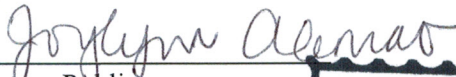
- b. Authorizing a collective opt-in notice to be provided to all current or former drivers and food delivery personnel who have delivered meals to customers of the Fresh Diet, Inc. in New York, New Jersey and Connecticut.
3. It is my understanding that Defendants' counsel has previously advised Plaintiffs' counsel that their motion is improper because The Fresh Diet, Inc. is not in possession of information regarding drivers and food delivery personnel who delivered meals on behalf of The Fresh Diet, Inc., and on whose behalf the instant action was commenced. Those individuals perform work for Late Night Express Courier Services, Inc., which is not a named party to this action.
4. It is also my understanding that counsel for Defendants has previously advised Plaintiffs' counsel of this issue via email on September 24, 2012, as well as during the prior initial conference and injunction hearings. As part of this same correspondence, Plaintiffs' counsel was advised that a notice could ultimately be agreed to if the proper parties were named.
5. Based on the foregoing, it is respectfully submitted that the Court deny Plaintiffs' motion.

Wherefore, it is respectfully submitted that Plaintiffs' motion be denied in its entirety and that Defendants be awarded such other relief as this Court deems just and proper.



Judah Schloss

Sworn to before me this  
11 day of October, 2012



Notary Public

ND: 4843-3636-5841, v. 1

